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Inventors: MURASAKI et al. Examiner: John M. Hotaling TECHNOLOGY CENTER R3700
Serial No.: 08/828,417 Group: 3713
Filing Date: April 10, 2000 Docket: P-9702 CON

For: Speech Generating Device and Method in Game Device and Medium for Same

Box Appeal Briefs
U.S. Patent Office, Director of Patents
Washington, D.C. 20231

BRIEF ON APPEAL

SIR:

Enclosed is appellant's Brief, in triplicate, in connection with an appeal filed in the above identified patent application. A Notice of Appeal was filed on May 31, 2002, in response to the Examiner's Final Office Action dated March 7, 2002. Please charge the necessary fee for the Appeal Brief, as set forth in 1.17(c), along with the fee for the extension of time of two months, to extend the due date of response to September 30, 2002, to our account no. 10-0100.

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I. REAL PARTY IN INTEREST.

Sega Corporation, the assignee of the above identified patent application, is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES.

There are no related appeals and/or interferences pending.

III. STATUS OF CLAIMS.

Claims 23-28, 31 and 34-44 are currently pending or of record. Claims 29, 30 and 32 have been canceled, without prejudice, during prosecution. Although claims 23-28, 31 and 34-44 are of record, applicant only appeals claims 23-28 and 39-44.

IV. STATUS OF AMENDMENTS.

No Amendment was filed subsequent to the Final Rejection. The last response filed by applicant was a response mailed on November 9, 2001, in response to the non-final Office Action mail May 9, 2001.

V. SUMMARY OF INVENTION.

The claims on appeal are claims 23-28 and 39-44. Of these claims, only claims 23 and 39 are independent claims, and these claims are similar in many respects. In both of

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these independent claims, a speech outputting game machine is defined that includes a plurality of phrase databases, each corresponding to a predetermined condition. Each database stores a plurality of command data that includes at least one or more commands representing a plurality of phrases. An important feature of the invention is that of these plurality of phrases in each data base, some of the phrases are related and, equally appropriate for a specified predetermined condition.

Claim 23 also requires that at least the first database have stored within it phrases in the voice of a first person and at least the second database have stored therein phrases in the voice of a second person. Switching means are provided for switching from one of said first and second databases to the other of said first and second databases. Processing means is provided for selecting a phrase database corresponding to a predetermined condition and outputting one of a plurality of alternative related phrases based on a command included in the selected specific command data.

Claim 39 substantially follows the definition of the invention of claim 23, except that it does not specifically require a switching means, although claim 39 does require that the processing means use the second phrase database according to replacement conditions designated by a player and that the language of the first phrase database be different from the language of the second phrase database.

The invention is summarized in more detail at pages 2 and 3 of the specification, where it is pointed out, at page 3, starting at line 4, that alternative phrase databases

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include different contents to the phrase databases and the processing section selects and outputs phrase data corresponding to the one state, to the state from the alternative phrase databases. In this connection, attention is respectfully directed to Fig. 3 and the description of that figure at pages 7-8 of the specification. It is clear from Fig. 3, for example, that for each condition 1, 2, ... , n, there is a plurality of words a1, a2, ... , an, for condition 1, and b1, b2, ... , bn, for condition 2. Thus, a word group is formed by collecting a plurality of interrelated words and any one of the plurality of words from each grouping of words can be selected randomly. A word group is formed by collecting a plurality of interrelated words (specification, page 7, lines 24-25). As also noted at the specification, page 8, line 9, each box contains a plurality of mutually related words. Examples of words or phrases that are related and can be used interchangeably in response to a given event are set forth at the specification, page 8, lines 9-14.

An important feature of the invention, therefore, is that a plurality of words or phrases are provided in a database, phrases related to each other and "equally appropriate for a specified predetermined condition." The specific word or phrase used is randomly selected so as to avoid tedious repetition and predictability, thus making the game more spontaneous and realistic.

The invention is to be distinguished from the prior art references relied upon by the Examiner in that while the prior art teaches the use of a plurality of different words or phrases, each specific occasion or event that occurs has one phrase or word assigned to

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it (in contrast to the present invention, in which phrases or words are randomly selected, from a range of possibilities, for a specific occasion or event, and the same event can, at different points in the game, elicit a number of different phrases). The present invention improves over the prior art approach and renders the game more desirable for the reasons stated, because it more closely mimics reality.

VI. ISSUES.

1. Would it be obvious to one skilled in the art to combine the following five references as proposed by the Examiner?

Murata et al., U.S. Patent No. 5,735,743;

Best, U.S. Patent No. 4,333,152;

Best, U.S. Patent No. 5,393,073;

Lowe et al., U.S. Patent No. 5,695,401; and

Cookson et al., U.S. Patent No. 5,712,950.

2. Does the combination of the following references proposed by the Examiner, if properly made, result in or provide the speech-outputting game machines defined in the claims on appeal?

Murata et al., U.S. Patent No. 5,735,743;

Best, U.S. Patent No. 4,333,152;

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Best, U.S. Patent No. 5,393,073;

Lowe et al., U.S. Patent No. 5,695,401; and

Cookson et al., U.S. Patent No. 5,712,950.

VII. GROUPING OF CLAIMS.

For the purposes of this appeal, applicant groups the claims on appeal as follows:

Claims 23-28 and claims 39-44 are taken together as one group.

As noted above, all of the claims on appeal 23-28 and 39-44 require a plurality of phrase databases representing a plurality of phrases including a plurality of phrases some of which are related and equally appropriate for a specified predetermined condition.

VIII. ARGUMENT.

A. Rejections.

Claims 23-28, 31 and 34-44 have been rejected as being obvious on the basis of a combination of a large number of references (five), namely, Murata '743 as the primary reference, when taken with the teachings in the following secondary references –

(a) Lowe et al. '401,

(b) Best '073,

(c) Best '152 and

(d) Cookson et al. '950

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– for reasons set forth in paragraph 1 of the Examiner's May 9, 2001 Office Action. The rejection in that Office Action is based on the identical combination of references relied on by the Examiner in the previous Office Action (July 5, 2000).

The Examiner's reference to "column 4, lines 25-70" on page 3 of the final Office Action is not understood, as column 4 only has 67 lines. The same is true for the Examiner's reference to column 10, lines 39-70 on page 6 of the Office Action, which is confusing as only 68 lines are contained in column 10. Also, "*page 4, line 14*" on page 4 of the Office Action is not clear, and this phrase has been interpreted as meaning "*column 4, line 14.*"

The Examiner's rejections of the claims are believed to be internally inconsistent, confusing and, therefore, difficult to respond to. On the one hand, the Examiner's states at page 4, line 1, of the Office Action that Murata discloses the use of "alternative phrases" based on the play of the game. However, on the last two lines on that page, the Examiner concedes that Murata lacks disclosure providing "alternate language commentary." Inasmuch as this feature is crucial to the invention and has been the source of much discussion during the prosecution, it is difficult to understand the Examiner's rejection. However, in order to present the arguments on appeal, it has been assumed that Murata *lacks* disclosure of such a feature. If it did contain such disclosure, the Examiner would undoubtedly have rejected the claims under 35 U.S.C. 102. Since such rejection has not been raised, it has been assumed that the rejection simply contains internally inconsistent

positions but that this occurred inadvertently, and the Examiner's intention was to address Murata in a manner that required a 35 U.S.C. 103 rejection.

2. Discussion.

In interpreting Murata, the Examiner correctly indicates, in the last paragraph on page 7 of the Office Action, that he has used a hindsight reconstruction and has justified doing so as long as only knowledge within the level of one of ordinary skilled in the art at the time of the invention was made is taken into account. However, for reasons above indicated, the primary feature or the essence of the present invention, which has been discussed above and in the prior prosecution, *was not known* and was not within the level of ordinary skill in the art. Since this feature is not disclosed or even remotely suggested in any of the references, primary or secondary, it is not understood how the Examiner can justify relying on hindsight reconstruction when there is nothing in the record that discloses or suggests a motivation for providing a totally new and novel feature.

The Examiner's primary reference, Murata et al. '743, has been relied on for the basic proposition that it is known to provide a device that generates play-by-play announcements corresponding to specific events in a game. The Examiner has heavily relied on the teachings of Murata et al. '743 for teaching of the use of "alternate phrases" for a given phrase of the game.

Murata et al. discloses a memory for storing a plurality of announcements each

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correlated to a specific one predetermined event. Thus, reviewing the announcements in each of the Murata et al. scenes, starting at column 3, line 48, through column 4, line 11, it will be noted that none of the announcements are related to each other in the sense that no two, or three, or more, are substantially synonymous and relate to the same game event, so that no one announcement can be interchanged for any other announcement in a set. Even if they could be changed, the reference specifically teaches away from such interchangeability. This is made evident in Fig. 4 of Murata et al., in which each event (S1), (S7) and (S13) results in only one possible announcement (S3), (S9) and (S15), respectively. In fact, this point is emphasized in Murata et al. starting at column 4, lines 9 through 23, in which the inventors distinguish the two announcements “HIT!” and “HIT A BALL!” While these two announcements ostensibly could have the same meaning, the inventors have emphasized that they are not intended to have the same meaning but rather to express a different “nuance”: each of these announcements corresponds to a slightly different “event,” or condition of play. Therefore, the Murata et al. device will only select *one* of these announcements when the corresponding event takes place and does not have the option of selecting any other – no matter how close in meaning or connotation the other selection is.

It is important, in this connection, to make reference to Fig. 3 and the description, starting at column 5, line 51 – column 6, line 26. It is Fig. 3 and in the associated description that Murata’s device clearly is discussed. At each diamond-shaped step of the

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process S1, S7, S13, ..., etc., the device needs to make a determination or judgment as to the occurrence of a certain specific event. If the answer to "YES", the device proceeds to the next step and designates or identifies the event. And therefore, if the pitcher throws the strike, the device makes its judgment and subsequently designates "STRIKE". The same is true for "BATTER OUT", "THREE MEN OUT", etc. In the corresponding identified text, the patentee clearly states that the device judges each event, and if an event takes place, vocal sound data is generated. It is clear from this description that the occurrence of each event "preordains" the specific verbal statement or audio that is generated. The system simply does not have the flexibility to randomly select one of a plurality of related and equally appropriate phrases and generate only one of those at any given time.

One can say Murata et al. is non-spontaneous or uncreative. However, the difference between the present invention and Murata et al. is almost like that between random and preselected, arbitrary and ordained, or arbitrary and predictable elements. One can almost predict what message(s) will be generated by Murata on the basis of the type of play involved; this is particularly true after the player has become familiar with all the messages and knows what to expect. This predictability does nothing to enhance the interest and excitement of the game.

In contrast, in the present invention the message announced adjusts to the nature of the event. Here the messages are spontaneous and relevant, and also unpredictable. The present invention is, therefore, much more realistic and better simulates the nature of the

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announcements in an actual setting.

The secondary references do not add or supplement Murata et al. with regard to the primary feature of the present invention. The combination of Murata et al. with any one or more of the secondary references would persist in being deficient against the essence of what applicants regard as their invention. And the issue of whether or not it would actually be obvious to one skilled in the art to combine the references as the Examiner has proposed has not been even taken into account. But even if such combination(s) were to be made, the resulting devices would fail to contain the attributes of the invention and would still lack any capacity to perform as the present invention performs, and to provide the desired features, functions and benefits of the invention as defined in the claims.

In his analysis of the present invention and Murata et al., the Examiner seems to confuse the kind of unpredictability that comes from switching an increased number of databases and the subject invention's ability to provide unpredictability through the very nature of its system. The unpredictability that arises from a larger database is not, in reality, unpredictability, counter to the Examiner's arguments. Real unpredictability results from randomness, and not from pre-ordination, just now in a larger pool. For this reason the Best patents add nothing to Murata. The same is true of Cookson, which by the Examiner's own statement may teach the manipulation of databases. These references, separately or in combination, do not teach or suggest the present invention. No one reference, and no possible combination, teaches or even suggests the possibility of a

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random selection of one of a plurality of related and equally appropriate words or phrases. It is here submitted, then, that the secondary references relied on by the Examiner add nothing to Murata, which itself – the Examiner concedes – needs more than its own teachings to render the present invention obvious.

Even if Murata '743 discloses what the Examiner alleges, the Examiner concedes (page 4 of the Examiner's May 9, 2001 rejection) that it lacks any disclosure regarding the provision of "alternate language commentary" and other features. Yet, in discussing each of the secondary references nowhere does the Examiner suggest that any of the references teaches or suggests such a feature. Each of the independent claims on appeal, claims 23 and 39, require that the databases contain phrases which are related and "equally appropriate for a specified predetermined condition."

On page 3 of the Office Action, the Examiner directs Applicants' attention to Murata '401, column 5 line 17 to column 6 line 24 for the teaching of a video game that uses "alternative phrases". However, for reasons previously discussed, this passage merely teaches the use of phrases that may be appropriate for a given play but this is precisely the prior art which Applicants have sought to improve. The use of the identical phrase (e.g. "BATTER OUT") each time that the event occurs (batter is out) renders the game boring or tedious after a period of play. The invention is intended to use *alternative equally appropriate* phrases for the *same* play or identical event.

The Examiner relies on Lowe et al, stating that this reference is relevant, although

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the Examiner concedes that the reference merely allows audio play by play commentary to be selectively muted and the audio to be replaced with *an audio insert that may be either silence or sound such as music or a commercial*. This is clearly intended to simulate the audio environment normally encountered when watching a football game. The patentee suggests that when the video format is Laser Video Disk it is possible to use two audio tracks that share common frame numbers. However, this is simply a statement of well known technology and does not even remotely teach or suggest the use of two or more data bases that each includes command data that represents a plurality of phrases that may be related and are equally appropriate for specified or predetermined conditions or events during a video game. Fig. 2 of Lowe et al. shows one video medium 12 and one audio medium 14 that are intended to allow a user to interact, as noted, with what appears to be an actual televised football game. It is obvious that the purpose for the multiple audio tracks for each video frame is to allow the system to provide more than one track of audio during the progress of the game, such as an announcer's voice, music, cheering of the crowd, etc. No suggestion whatsoever of the invention as defined in the claims and clarified to the Examiner on numerous occasions.

Reliance on the Best patents for the teaching of audio clips switched to provide multiple story plots to make the system less predictable again misses the point. The present invention is for a video game and not to a system for playing unpredictable story plots.

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Not finding a reference that teaches or suggests the invention as defined in the claims of record, the Examiner resorts to simply alleging that it would be obvious to use two announcers and to have multiple announcers for commenting on a game.

In the present invention, a plurality of phrases are made to correspond to one *single* game situation. Thus, even though the same game may recur, and in exactly the same way, the device has the option and can select a different, but substantially synonymous or at least equally appropriate phrase or announcement. In a succeeding repetition of this identical event, therefore, the device can enunciate a completely differently announcement. Murata et al. clearly fails to teach or even remotely suggest such an arrangement or method as disclosed and claimed in the subject application. In fact, not only does Murata et al. fail to teach or suggest the desirability of such use of optional phrases but expressly teaches away from them, and therefore teaches away from the present invention.

As noted, the gist of the present invention is that a plurality of phrases is made to correspond to one single game situation; and when this same game situation recurs, the same phrase may or may not be reproduced. For example, assume that the following game situation: a runner is on first base and the batter hits a single. The system of the present invention randomly selects a response and outputs one phrase, such as "(player's name) HITS A SINGLE!" or "IT'S A HIT!" and so on. The present system does *not* always output the same phrase as it did before, even when the same game situation recurs.

It is clear that the Examiner has simply tried to reconstruct the invention by using the

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hindsight of the present application and the teachings contained therein by picking and choosing references that the Examiner has felt contained “pieces” of the invention.

However, even with such hindsight reconstruction the combination of all the references still fails to teach or suggest the invention. Further “inventive” modifications to the proposed combination would still need to be made and, as before, there is simply no demonstration that there would be any motivation to do so. For the Examiner to suggest that the motivation comes from the references because they all teach the selective use of audio and video games is unreasonable for a number of reasons. If the broad use of audio and video games was a motivation to suggest the invention the same can be said of the other numerous references. Once the first patent issued none of the others should have issued since the motivation was there to conceive all the further improvements or modifications that were, in fact, patented. Furthermore, the Examiner’s argument might be somewhat credible if the proposed combination in fact resulted in the claimed invention. However, as noted, it does not even come close, even after combining the five (5) prior art references.

Applicant’s position is further believed to be confirmed by the fact that the references cited by the Examiner have been selected from several diverse classes and subclasses, many of them directed to widely divergent arts. An expert in *one* of these arts would not necessarily be an expert in any other of the arts, or in all of them. Again, without a clear incentive to combine *five* references, it is almost necessary to conclude that obviousness cannot exist in this situation, and that any proposal to combine so many

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references could only arise from “hindsight reconstruction” – which is clearly forbidden by the Court of Appeals for the Federal Circuit, and by the Patent Act. Where, then, does the necessary come from? It is respectfully submitted that is that it can only have come from the instant application.

It is error to reconstruct the patentee’s claimed invention from the prior art by using the patentee’s claim as a “blueprint.” When prior art references require selective combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight obtained from the invention itself. Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985). Here, it is clear that the Examiner has used hindsight reconstruction.

A number of factors confirm this. First, the Examiner has considered it necessary to rely on five references. This makes it highly unlikely that one skilled in the art would have thought to combine all those references to arrive at the combination proposed by the Examiner. Furthermore, such incentive would clearly have been lacking when, as here, even if the proposed combination were to be made, it would still omit the essence or crux of the invention. It is impermissible to use the claimed invention as an instruction manual or “template” to piece together the teachings of the prior art so that the claimed invention is rendered obvious. The courts have repeatedly stated that one “cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to the claimed invention.” In re Fritch, 972 F.2d 1260, 23 USPQ 2d 1780 (Fed. Cir. 1992). This

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is even more clearly the case in the present invention, where the elements are taken from nonanalogous sources, in a manner that seeks to reconstruct the applicant's invention only with the benefit of hindsight. This is insufficient to present a prima facie case of obviousness. In re Oetiker, 977 F.2d 1443, 24 USPQ 2d 1443 (Fed. Cir. 1992). See also, Texas Instruments, Inc. v. U.S. International Trade Commission, 988 F.2d 1165, 26 USPQ 2d 1018 (Fed. Cir. 1993). Simply stated, the motivation to combine references cannot come from the invention itself. Heidelberger Druckmaschinen A.G. v. Hantscho Commercial Products, Inc., 21 F.3d 1068, 30 USPQ 2d 1377 (Fed. Cir. 1993). In Sensonics v. Aerosonic Corp., 81 F.3d 1566, 38 USPQ 2d 1551 (Fed. Cir. 1996), the court summarized as follows:

To draw on hindsight knowledge of the patented invention when the prior art does not contain or suggest that knowledge is to use the invention as a template for its own reconstruction – an illogical and inappropriate process by which to determined patentability.

In the case at hand, the “knowledge” is also the crux or essence of the invention, a feature that was not only lacking in the prior art, but also lacking is any of the references proposed to be combined. What the Examiner is proposing, therefore, is that a string multiple references be combined, without sufficient incentive to do so, and then that the proposed combination be modified or enhanced by adding to that proposed combination the essence or crux of the claimed invention. This is not condoned by the case law, nor by the statute.

The Court of Appeals for the Federal Circuit has identified three sources for

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motivation, including the nature of the problem to be solved, the teachings of the prior art and the knowledge of persons of ordinary skill in the art. In re Rouffet, 149 F.3d 1350, 47 USPQ 2d 1453 (Fed. Cir. 1998). It is respectfully submitted that the Examiner has failed to demonstrate that any of these three sources exist in this case for introducing the novel feature of the invention. The Examiner has merely alluded to the fact that the motivation would be within the knowledge of persons of ordinary skill in the art. However, without more exposition, such bare or naked statement is insufficient. Otherwise, such statement could be made, and that position taken, in every instance an invention where an invention is rejected on the basis of obviousness.

IX. CONCLUSION.

For the foregoing reasons, it is respectfully submitted that neither the applied art nor the knowledge of those skilled in the art at the time that the invention was made evidences a knowledge of the claimed invention. Also, there is no evidence that it would be obvious to combine the references as proposed by the Examiner – we have no more than the Examiner's bare allegation of this, for the reasons stated. And finally, it would not be obvious that one could reach the present invention by simply combining the references as proposed by the Examiner, since such a proposed combination would have to be again modified by introducing a further feature at the point of novelty, and this would be impossible without the hindsight of the present application and the teachings contained

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therein.

For all of these reasons, it is respectfully submitted that the claimed invention defined in the claims on appeal clearly and patentably distinguish over the applied art. A reversal of the Final Rejection and the allowance of the subject application is, accordingly, respectfully requested.

Dated: September 30, 2002

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Myron Greenspan

Attorney

Signature

September 30, 2002

Date

Applicant hereby petitions that any and all extensions of time of the term necessary to render this response timely be granted. COSTS FOR SUCH EXTENSION(S) AND/OR ANY OTHER FEE DUE WITH THIS FEE DUE WITH THIS PAPER THAT ARE NOT FULLY COVERED BY AN ENCLOSED CHECK MAY BE CHARGED TO DEPOSIT ACCOUNT #10-0100.

APPENDIX

This brief appeals the Examiner's rejection of claims 23-28 and 39-44:

23. A speech outputting game machine, comprising:

a plurality of phrase databases each corresponding to predetermined condition and each storing a plurality of command data including at least one or more commands representing a plurality of phrases some of which are related and equally appropriate for a specified predetermined condition, at least a first database having stored therein phrases in the voice of a first person and at least a second database having stored therein phrases in the voice of a second person ;

switching means for switching from one of said first and second databases to the other of said first and second databases;

processing means for selecting a phrase database corresponding to a predetermined condition when said predetermined condition is satisfied during the progress of the game, for selecting a specific command data based on predetermined procedures among the plurality of command data stored in the selected phrase database, and for outputting one of a plurality of alternative related phrases based on the command included in the selected specific command data; and

a speech output device for outputting a speech based on the phrase output from said processing means, whereby different ones of said plurality of alternative related phrases may be generated upon the occurrence of the same condition during the progress

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of the game.

24. A speech outputting game machine according to claim 23, wherein said processing means selects one command data at random among said plurality of command data stored in the selected phrase database.

25. A speech outputting game machine according to claim 23, wherein said processing means suspends the output of said phrase data according to the phrase suspension command included in said specific command data.

26. A speech outputting game machine according to claim 23, wherein said command data includes a blank command for designating an interval between a first phrase data based on a first command and a second phrase data based on a second command; and

wherein said processing means outputs said second phrase data after outputting said first phrase data and after a period designated by said blank command has lapsed.

27. A speech outputting game machine according to claim 23, wherein said command data includes a wild card command; and

wherein said processing means determines and outputs phrase data based on said game progress for the wild card command included in said predetermined command.

28. A speech outputting game machine according to claim 23, wherein the command data stored in said first phrase database includes a jump command for designating a second phrase database; and

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wherein said processing means selects a second phrase database according to the jump command included in said specified command data, and selects a specific command data according to predetermined procedures among the plurality of command data stored in said selected second phrase database.

39. A speech outputting game machine, comprising:

a plurality of phrase databases each corresponding to predetermined condition and each storing a plurality of command data including at least one or more commands representing a plurality of phrases some of which are related and equally appropriate for a specified predetermined condition;

processing means for selecting a phrase database corresponding to a predetermined condition when said predetermined condition is satisfied during the progress of the game, for selecting a specific command data based on predetermined procedures among the plurality of command data stored in the selected phrase database, and for outputting one of a plurality of alternative related phrases based on the command included in the selected specific command data; and

a speech output device for outputting a speech based on the phrase output from said processing means, whereby different ones of said plurality of alternative related phrases may be generated upon the occurrence of the same condition during the progress of the game, said processing means uses said second phrase database according to replacement conditions designated by a player and the language of said first phrase

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database being different from the language of said second phrase database.

40. A speech outputting game machine according to claim 23, wherein said processing means uses said second phrase database according to replacement conditions designated by a player.

41. A speech outputting game machine according to claim 39, wherein said processing means uses said second phrase database according to replacement conditions designated by a player.

42. A speech outputting game machine according to claim 23, wherein said switching means changes over from one of said databases to the other of said upon the occurrence of a predetermined event.

43. A speech outputting game machine according to claim 39, wherein said processing means uses said second phrase database according to replacement conditions designated by a player.

44. A speech outputting game machine according to claim 42, wherein said processing means uses said second phrase database according to replacement conditions designated by a player.